IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.12645 of 2006
NAGESHWAR PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.12529 of 2006
DINESH KUMAR & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.12763 of 2006
UPENDRA PRASAD SINGH @ UPENDRA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.12764 of 2006
LALAN SHARMA
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.12774 of 2006
GANGA SAGAR PASWAN
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13201 of 2006
BHARAT MAHTO
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13220 of 2006
CHANDESHWAR PANDIT
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13221 of 2006
HARI SHANKAR PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13232 of 2006
KUSUM BIHARI LAL

Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13239 of 2006
UMA SHANKAR PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13309 of 2006
DAYANAND MANDAL
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13370 of 2006
RAMANUJ SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13371 of 2006
RAMJEE SINGH
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.13372 of 2006
PARMANAND SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13423 of 2006
BINDESHWARI PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13424 of 2006
HARE KRISHNA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13427 of 2006
RAMAUTAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13429 of 2006
BRAHMDEO DAS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13447 of 2006
SRI KANT SHARMA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13449 of 2006
SUKHDEO PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13461 of 2006
INDERDEO PRASAD CHOUDHARY
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.13468 of 2006
VIJAY KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13471 of 2006
PRADEEP KUMAR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13472 of 2006
KAPILDEO PRASAD SINGH (SINCE DEAD)
MOST. RAMUN DEVI AND OTHERS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13474 of 2006
BINOD KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13488 of 2006

BRAJ NANDAN PASWAN
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13523 of 2006
SRI RAM SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13548 of 2006
ARBIND KUMAR SINHA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13549 of 2006
RAM BALAK SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15514 of 2006
ABINASH SHARMA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13579 of 2006
RAJENDRA CHAUDHARY & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13998 of 2006
BIRENDRA LAL SRIVASTAWA & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.14095 of 2006
AWADHESH KUMAR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.14397 of 2006
CHITESHWAR PRASAD SINGH & ORS
Versus
THE STATE OF BIHAR & ORS

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with

CWJC No.14399 of 2006
XAVIER JAUNDI KURUS & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15014 of 2006
ASHOK KUMAR
Versus
THE BISCOMAN THROUGH ITS CHAIRMAN
with

CWJC No.15394 of 2006
RAM PRVSH RAM
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15404 of 2006
UDAY SHANKAR
Versus
THE BISCOMAN THROUGH ITS CHAIRMAN
with

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CWJC No.15463 of 2006
RAJESHWAR MANDAL
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15648 of 2006
SURYA NARAYAN RAI & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15734 of 2006
RAJNARAYAN JHA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15754 of 2006
JAY SHANKAR PRASHAD JAISHAWAL@ JAY SHANKAR JAISHWAL
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15776 of 2006

RAM AAGAR PANDAY @ RAM SAGAR PANDEY
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15851 of 2006
SHIVMANGAL SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15896 of 2006
TARKESHWAR PRASAD SINHA & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15984 of 2006
RAJ MANGAL SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.16016 of 2006
JAIKANT JHA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.16017 of 2006
PRABHU NATH SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.16149 of 2006
DINESHWAR PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.16206 of 2006
SITA RAM SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.16277 of 2006
BHOLA MAHTO & ANR
Versus
THE STATE OF BIHAR & ORS

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with

CWJC No.214 of 2007
NAGESHWAR PRASAD YADAV & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.375 of 2007
RJENDRA MANDAL
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.512 of 2007
CHANDRA NARAYAN MISHRA & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.763 of 2007
MAHENDRA PANDEY & ORS
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.808 of 2007
KRISHNA NANDAN SINGH
Versus
THE STATE OF BIHAR & ANR
with

CWJC No.1070 of 2007
AWADHESH KUMAR SINGH & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.1381 of 2007
RADHA KRISHNA JHA
Versus
THE M.D.,BIHAR STATE CO-OPERATIVE MARKETING UNION LTD.& ORS
with

CWJC No.1426 of 2007
KALAKTOR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.1575 of 2007

RANA BINDESHWARI SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.1670 of 2007
UDAY SHANKAR
Versus
THE BIHAR STATE CO-OPERATIVE MARKETING UNION LTD. & ORS
with

CWJC No.1722 of 2007
UMA SHANKER PRASAD SINHA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.1931 of 2007
NAGENDRA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.2449 of 2007
VIJAY KUMAR SINGH
Versus
THE M.D.,BIHAR STATE CO-OPERATIVE MARKETING SOCIETY & ORS
with

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CWJC No.2528 of 2007
NARESH PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.2695 of 2007
JAVINDRA YADAV
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.2763 of 2007
SARYU SHARMA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3682 of 2007
AFJAL HUSSAIN ANSARI
Versus
THE STATE OF BIHAR & ORS

with

CWJC No.3707 of 2007
DADAN SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3734 of 2007
UPENDRA KUMAR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3760 of 2007
SHAMBHU SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3844 of 2007
SIYA RAM SHARMA
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.3850 of 2007
AKLESH RAM @ AKHILESH RAM
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3882 of 2007
YOGENDRA PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3932 of 2007
RAM CHARITRA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3950 of 2007
SURESH KUMAR SINHA
Versus
THE STATE OF BIHAR & ANR
with

CWJC No.3991 of 2007

SURESH PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4038 of 2007
SHASHI KUMAR VERMA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4044 of 2007
PARSHURAM SHARMA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4057 of 2007
PRAMOD KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4081 of 2007
DEOKANT LAL DAS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4083 of 2007
MANOJ KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4087 of 2007
LALIT KUMAR THAKUR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4163 of 2007
SATENDRA PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4185 of 2007
DEVENDRA CHOUDHARY
Versus
THE STATE OF BIHAR & ORS

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with

CWJC No.4204 of 2007
SANT KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4212 of 2007
LACHHUMAN PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4226 of 2007
RAJ KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4232 of 2007
RAJESHWAR RAY
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.4234 of 2007
RAM NARESH KUMAR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4373 of 2007
SURENDRA MISHRA
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4376 of 2007
SAKALDEO PASWAN
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4716 of 2007
BIRENDRA PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4727 of 2007

YOGENDRA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4868 of 2007
ASHOK KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4915 of 2007
SHAILENDRA KUMAR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4929 of 2007
PRABHU DYAL PANDEY
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4930 of 2007
SIDH NATH PATHAK
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.4937 of 2007
GYAN CHANDRA PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4939 of 2007
VIJAY BAHADUR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4941 of 2007
RAMAKANT SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4942 of 2007
RAMESHWAR SINGH
Versus
THE STATE OF BIHAR & ORS

with

CWJC No.4944 of 2007
RAJENDRA PRASAD PASWAN
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.4946 of 2007
KRISHNA BACHCHA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.5516 of 2007
ARJUN PRASAD SINGH
Versus
BISCOMAUN & ANR
with

CWJC No.6124 of 2007
MRITUNJAY PATHAK
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.6366 of 2007
SANT KUMAR CHAUHAN
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6372 of 2007
RANGJEE SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6382 of 2007
CHANDESHWER RAM
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6404 of 2007
SHEO KUMAR RAM
Versus
BISCOMAUN THROUGH ITS ADMINISTRATOR & OTHERS
with

CWJC No.6427 of 2007

BIRENDRA PRATAP SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6661 of 2007
RAMANUJ PANDEY
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6686 of 2007
SURYA DAYAL SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6734 of 2007
BINDHYACHAL SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6759 of 2007
MADAN RAY
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.6801 of 2007
BHAGWAN RAI
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6867 of 2007
RAM CHANDRA PRASAD
Versus
BISCOMAUN THROUGH ITS ADMINISTRATOR & OTHERS
with

CWJC No.7016 of 2007
MD.MASIHUDIN SHAH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.7248 of 2007
SAKALDEEP SAH
Versus
BISCOMAUN THROUGH ITS ADMINISTRATOR & OTHERS

with

CWJC No.7501 of 2007
DHRU RAY
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.7546 of 2007
KANHAIYA PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.7814 of 2007
UPENDRA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.8090 of 2007
SURENDRA PRASAD
Versus
BISCOMAUN & ORS
with

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CWJC No.8091 of 2007
DEEP NARAYAN PRASAD
Versus
BISCOMAN & ORS
with

CWJC No.8136 of 2007
DEVENDRA PRASAD
Versus
BISCOMAUN & ORS
with

CWJC No.8178 of 2007
SACHIDA NAND KUMAR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.8318 of 2007
RAS BIHARI RAM
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10374 of 2007

BHARAT PRASAD SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10406 of 2007
BHAGGU RAI
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10409 of 2007
RAMAYAN PRASAD
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10466 of 2007
PRADEEP KUMAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10544 of 2007
SHIV PUKAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.10552 of 2007
RAM AYODHYA PANDEY
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10771 of 2007
HARISHWAR DAYAL SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10782 of 2007
DAYA SHANKAR SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.10859 of 2007
SHESH NATH SINGH
Versus
THE STATE OF BIHAR & ORS

with

CWJC No.10890 of 2007
RAVINDRA SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.11109 of 2007
HARI NANDAN RAM
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.11301 of 2007
MD.SAMSUL HAQUE KHAN
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.11424 of 2007
GAUTAM PRASAD SHRIVASTAV
Versus
THE STATE OF BIHAR & ORS
with

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CWJC No.12435 of 2007
RAMDEO PRASAD SINGH
Versus
THE BISCOMAN,THROUGH ITS CHAIRMAN & OTHERS
with

CWJC No.14280 of 2007
AWADH KISHORE SINGH
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.15238 of 2007
RAMUDIT SINGH & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.3685 of 2007
LAL BAHADUR
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.13026 of 2006

KUMAR JYOTI VARDHAN & ORS
Versus
THE STATE OF BIHAR & ORS
with

CWJC No.6949 of 2007
BIHARI SINGH
Versus
THE STATE OF BIHAR & ORS
******

FOR THE PETITIONERS : M/S. S. K. VERMA,SR. ADVOCATE , SURENDRA KISHORE VERMA AND JITENDRA KISHORE VERMA.
FOR THE BISCOMAUN : M/S. SUNIL KUMAR SINGH NO.1, KUMAR SHAILESH AND RAKESH KUMAR RANJAN
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5 1/10/2008 All the petitioners are night guards and claim themselves to be permanent employees of what is known as Bihar State Co-operative Marketing Union Limited (BISCOMAUN), an apex co-operative body, created and registered under the Bihar Co-operative Societies Act. The body in question was established way back in the year 1954. It has its own Bye-laws and a Board of Directors headed by Chairman to run the affairs. The reason why such large number of writ applications have been filed is that some of the petitioners have been issued notices dated 25.9.2006 which is annexure-2 to CWJC No. 12645 of 2006 asking them to show cause as to why their services should not be terminated. They are about a dozen and half petitioners of this kind. The rest are aggrieved by an identical order of termination passed on 31.10.2006, one of them is annexure-2(ii) contained in I.A. NO. 5278 of 2006 filed in CWJC No. 13371 of 2006 (Ramjee Singh v. The State of Bihar and others). It is clarified that since both the notices for termination as well as the actual order of

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termination are identical it was agreed upon that since common questions of law are involved they all be heard and decided together, may be by a common order. It is in this background that all these writ applications have been heard and are being decided together. There is not much of variance in facts or the questions of law which emerge for consideration and decision.

Facts of Nageshwar Prasad Singh's case against notice:

Majority of these petitioners were appointed on the post of a night guard on daily wages at Rs.6/- per day, some time in the year 1975 onwards. Some of the engagement orders which are on record categorically states that the engagements are purely temporary and liable to be terminated at any time without assigning any reason thereof. All the appointees thereafter continued to work in that capacity for many a years as would be evident from annexure-1 (i). Subsequently the Board of Directors in its meeting No. 1983 dated 23.11.1983 decided to provisionally confer status of a permanent employee on a large category of employees on the post they are holding which is reflected in annexure-4 to the writ application. In so far as night guards are concerned there were 731 in number who were supposedly appointed between 5.4.1975 to 28.6.1983. In para 7 of annexure-4 there is indication that these appointments were being made to carry out the activities of various projects which BISCOMAUN was carrying on at the relevant time. These were the heydays of BISCOMAUN and varied business were being carried out which included sale of fertilizers, seeds, insecticides, coal etc.

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Based on the decision of the Board of Directors, (Annexure-4), petitioners came to be given a pay-scale and other emoluments which was to be effective from 1.1.1984. This would be corroborated by the order which has been brought on record as annexure-1(iii). Similar kinds of orders, it seems, were issued at the local level and all these petitioners came to acquire a kind of permanent status and performed their duties at their places of posting. All had been well thereafter till the body in question came to be superseded by the State Government and an Administrator came to be appointed to run the day-to-day affairs. Though the supersession was made purportedly by the State Government, in the interest of the apex body but things took a nose-dive and the financial condition of the body took a severe beating. It is not disputed at the bar and the Court also does take judicial notice of this fact that majority of employees of BISCOMAUN are not being paid salary from the year 1995 onwards. Hundreds of writ applications are filed seeking directions upon the respondents for payment of salary, past and present and at times payment of retrial dues as well.

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In the above background a decision seems to have been taken by the Board of Directors on 21.8.2005 to terminate the services of all the night guards because the Society neither had utility nor the funds to utilize the services of the petitioners. Based on the decision of the Board of Directors, the Managing Director decided to issue notices asking for a show cause as to why their services be not terminated and identical notice therefore dated 25.9.2006, contained in

annexure-2, was issued to some employees including this petitioner. Some of the writ applications therefore is against notice to show cause, pre-termination.

Facts of Ramjee Singh's case against termination:

Some of the basic facts which have been noticed by the Court with regard to Nageshwar Prasad Singh's case are identical. In this writ application and other writs the difference is that in the case of these petitioners (about 632) their services have been terminated by an identical order dated 31.10.2006, though issued individually. One of the order is annexure-2 (ii) in I.A. No. 5278 of 2006 filed in the writ application. The largest number of petitioners therefore are before this Court challenging the order of termination.

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Submissions on behalf of the petitioners:

The basic or the preliminary submission which has been made on behalf of the petitioners is that since all of them acquired a permanent status by virtue of a decision of the Board of Directors taken way back in the year 1983, they cannot be terminated in this arbitrary manner by a common kind of order without holding any departmental enquiry or in absence of any wrong doing on their part. No permanent employee can be removed merely on the basis of a notice and that too issued on a large scale. A permanent employee has a right to continue in that capacity till he reaches the age of superannuation. They have a vested right to the post and the entire exercise of either issuing show cause for termination or actual order of termination is per say illegal. A submission is also made with regard

to such petitioners who have been issued notice to show cause is that since the respondents have not acted upon them for a couple of years it will be deemed to have been waived by now. They also submit that the appointment to the post was not for a scheme and the reasons for termination are imaginary. Since identical orders which are xerox copies have been issued to all the petitioners it shows total lack of application of mind. It is also urged that a reading of the orders of termination or the show cause would show that the reasons given are conflicting in nature. Yet another submission is that since Board of Directors has already taken a decision on 20.8.2005 to remove the petitioners even the formality of notice amounts to a post decisional hearing and therefore is no hearing in the eyes of law. The above submissions have been compiled together which was made by various counsels on behalf of the petitioners and shall be dealt with in the subsequent part of the order.

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Submissions on behalf of the respondents:

On behalf of the respondent BISCOMAUN two model counter affidavits have been filed, one in the case of Nageshwar Prasad Singh which deals with notice to show cause and the other in the case of Ramjee Singh which deals with termination. It is urged that the counter affidavits should be treated as the stand of the respondents in all the cases. The stand of the respondents, therefore, are culled out from these two counter affidavits as well as the submissions made at the bar.

The preliminary submission made on behalf of the

respondents is that there is no wrong doing in removing or terminating the petitioners from their posts because there is no utility or purpose of their retention in service any more. Petitioners have got no legal/fundamental right to challenge the impugned orders for the following reasons:

(a) The appointment was made for a specific purpose/scheme purely on temporary basis without following the regular process of recruitment.

(b) Although the appointment was regularized at a subsequent point of time but even such regularization was made subject to condition that the appointment being temporary in nature could be terminated at any time without any show cause, having regard to the specific nature of appointment.

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(c) The initial appointment itself was made in the exigency of the situation without following the due process of regular appointment like advertisement, interview and adherence to the reservation rule and number of sanctioned vacancies.

(d) The respondent BISCOMAUN had no other option but to issue a show cause notice for termination of services and in some cases orders of termination of services on the receipt of show cause, once the society discovered to its surprise that due to the closure/abandonment of the scheme under which such appointments had been made, the large work force in Class-IV cadre had become surplus and that the financial condition of the society had worsened so much so that the society was not in a position to bear the burden

of the surplus workforce particularly when the rehabilitation package/scheme prepared by the society for consideration of the State Government was not getting any positive response despite several meetings having been held at the government level for the said purposes.

Further submission on behalf of the respondents is that way back in the year 1976 itself, the Agriculture Department of the Government of Bihar had given a direction to BISCOMAUN under letter No. 18002, dated 16.11.1976, issued under the signature of the Secretary to open depots and sales centres in a large number of command areas/ blocks of Bihar where BISCOMANUN did not have its own depots or sale centres. In the said letter, it was however said that the Government would compensate BISCOMAUN for the losses incurred by it on account of the opening and running of such depots or sale centres.

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BISCOMAUN had to comply with the aforesaid direction of the Agriculture Department of the State Government and had to open depot/sale centres in the different command areas/blocks of Bihar for execution of the said scheme of the Agriculture Department. In order to carry out the scheme of the Agriculture Department, BISCOMAUN had to recruit a large number of persons as Night Guards/Khalasi etc. in Class-IV cadre on daily wages beyond the sanctioned vacancies so as to meet the requirement of the scheme. The requirement of such night guards etc. was made purely

on a temporary basis without following the recruitment rules for the specified purpose of execution of the government sponsored scheme.

BISCOMAUN had to incur a huge financial loss on account of the execution of the aforesaid scheme of the Agriculture Department but, surprisingly enough, the State Government instead of keeping its commitment by compensating BISCOMAUN for the loss incurred by it to the tunes of over Rs.40 crores paid a paltry sum of Rs.28 Lakh to BISCOMAUN and did not make payment of the remaining dues of Rs.321470243/- which is still over due with interest.

It was not only the aforesaid scheme of the agriculture Department of the State Government but many more similar schemes on account of execution of which, BISCOMAUN had to incur heavy financial losses which have not been compensated for to BISCOMAUN by the State Government.

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Sum essence of the submissions made on behalf of the respondents is that though the background to the appointment of the petitioners and their entry into service has been stated to be one of the reasons for removal from service but the primary reason why the respondents have taken such a difficult decision is that there is neither any use of the post nor any money or resources available for continuing the service on the post. Respondents cannot be burdened by such a huge manpower when virtually all the activities of the society in the field have come to a standstill. It is also submitted that the appointment at the relevant time was made looking

at the exigency of the services at that time. The purpose of such appointments was for the projects which were going on at the relevant time and if the petitioners think that it gave them a right of life long retention, it is a misplaced kind of assumption and trust. The termination therefore is basically on the ground of abolition of posts or their utility and lack of financial resources. Merely because orders in question narrate the background also, it does not mean the reasons for termination is based on conflicting grounds.

It has been strongly urged by the respondents that they have a right to terminate even permanent employees if the necessity for the post and work no longer exits. The powers of creation and abolition of posts are within the jurisdictional sphere of appointing authorities and some functions are administrative in character. In this background there is no occasion for the Court to direct continuance of service of such incumbents. Reliance has been placed in this regard on a decision rendered in the case of **B. Krishnamurthy v. Chairman, Madras Port Trust and others, 1996 (II) L.L.J. 221.** Reliance has also been placed on a decision of the Hon`ble Supreme Court in the case of **Rajendra and others v. State of Rajasthan and others, (1999) 2 SCC 317.** The Hon`ble Supreme Court held that the mandamus cannot be issued to compel an employer to keep a post/employee no longer needed. If non-availability of fund is one of the reasons then it is a valid reason for such decision and there is no occasion to urge that services of permanent employees cannot be brought to end except by holding a departmental enquiry.

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Yet another decision of the Supreme Court has been relied upon by the respondents for the proposition that there is no necessity to issue show cause notice and giving opportunity if the post concerned itself stand abolished. Reliance is placed on the decision rendered in the case of **State of Haryana v. Shri Desh Raj Sangar and another, (1976) 2 SCC 844.**

Learned counsel for the respondents also placed reliance on a recent decision of a constitution Bench of the Supreme Court which is the case of **Secretary, State of Karnataka and others v. Umadevi (3) and others, (2006) 4 SCC 1.** Paragraph 19 of this decision on which special emphasis has been placed is reproduced below which has significance, though the issue was regularization.

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"19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the

undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive."

Keeping in view the divergent views expressed by Apex Court and the Madras High Court the mater has now to be considered whether the action of the respondents requires interference?

The Court has considered the matter in its entirety. It is not a case where a permanent employee is sought to be removed, on ground of any misconduct or indiscipline. It is a case where a large work force has lost its relevance in the back ground that the object and purpose for which the appointment of these petitioners was made in haste has lost its meaning down the line. If the view of the courts expressed in some of the decisions noticed above is taken into consideration, then this Court has difficulty in holding that the petitioners cannot be terminated from their services without holding a departmental enquiry or before they reach the age of superannuation. If the State or its functionaries can take decisions for termination of the services of permanent employees in the given circumstances then it cannot be gain said that a co-operative body does not have this right.

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The ground reality is that all the depots and activities of the society have withered away and the activity has narrowed down to the Headquarter. The Body in question is surviving on rent and some dues which they are drawing from the property rented out and

they have no need for these night guards for protecting any property. Not only this, BISCOMAUN has not been paying salary to its employees from the year 1995 onwards and they are in deep financial distress, struggling to survive. They do not have capacity to sustain such a large work force nor any purpose is being served for retention of the petitioners in the organization.

In the above background and the legal submissions, the Court does come to a considered opinion that no case is made out for interference against the notice of termination or the actual orders of termination which has already been passed against all the petitioners who are before this Court.

The writ applications have no merit and they are dismissed.

rkp **(Ajay Kumar Tripathi, J)**

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